

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-437-C - ORDER NO. 91-1153
DECEMBER 20, 1991

IN RE: Application of VNI Communications,)	ORDER DENYING
Inc. for a Certificate of Public)	PETITION FOR
Convenience and Necessity.)	REHEARING AND/OR
)	RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of a Petition for Rehearing and/or Reconsideration filed on behalf of Southern Bell Telephone & Telegraph Company (Southern Bell) wherein Southern Bell seeks rehearing and reconsideration of Commission Order No. 91-1001 which granted a Certificate of Public Convenience and Necessity to VNI Communications, Inc. (VNI). Southern Bell files its Petition pursuant to S.C. Code Ann. §§58-9-1200 and 1-23-10, et seq. (Supp. 1990).

Southern Bell's Petition alleges that portions of Order No. 91-1001 are not supported by the record, are arbitrary and capricious, are unclear or otherwise in contravention of the laws and constitutions of South Carolina and the United States. Southern Bell asks that the Commission rehear argument and reconsider the Commission's denial of Southern Bell's Motion for a directed verdict, the Commission's granting application without necessary

information, and that the Commission's decision contains insufficient findings and conclusions. The Commission has considered and reviewed the allegations of error asserted by Southern Bell and finds that the Petition should be denied based upon the following rationale:

Southern Bell alleges error on the part of the Commission in its denial of Southern Bell's Motion for a Directed Verdict. Southern Bell's Petition alleges that its Motion was made pursuant to Rule 50(A) of the South Carolina Rules of Civil Procedure and were based on the following specific grounds:

1. Applicant's failure to provide information concerning transactions with its affiliates as required by S.C. Code Ann. §58-9-320 (Supp. 1990).
2. Applicant's failure to provide a notice to the Commission of its rates thirty days prior to the hearing as required by S.C. Code Ann. §58-9-520 (Supp. 1990).
3. Applicant's failure to provide and the Commission's failure to consider information regarding Applicant's intrastate rate base; revenues and expenses; capitalization; net income required on its net worth; and information to determine a fair rate of return as required by S.C. Code Ann. §58-9-570 (Supp. 1990).
4. Applicant's failure to seek approval of depreciation schedules as required by S.C. Code Ann. §58-9-350 (Supp. 1990).

The Commission has reviewed the above allegations of error and finds the Code sections cited by Southern Bell are not applicable to a application for certification of a telephone reseller. The Applicant's application fully complies with all relevant statutory provisions.

As to Section 58-9-320, Southern Bell did not raise this issue as part of its Motion before the Commission and, therefore, is barred from raising this Code section in its Petition for Reconsideration. However, even assuming that Southern Bell did raise this issue, this Code section is inapplicable to an application for authority. There is no evidence in the record to indicate that there is any substantial affiliation of any other telephone utility with VNI.

Contrary to Southern Bell's argument, Section 58-9-520 only requires a telephone utility to provide the Commission with thirty (30) days advance notice of its intention to file a new rate or tariff which will affect its general body of subscribers. Here, VNI seeks a Certificate of Public Convenience and Necessity under Section 58-9-280 to operate as a telephone utility in South Carolina. VNI is seeking initial authority to operate as a utility and to establish its initial rates and charges; it is not seeking authority to change or increase its rates as contemplated by Article V, Chapter 9 of Title 58. Accordingly, the Commission determines that Section 58-9-520 is inapplicable to a grant of authority for a Certificate and establishment of rates for a long distance reseller.

Likewise, the Commission concludes that Section 58-9-350 (1976) is inapplicable. Section 58-9-350 gives telephone utilities the right to charge depreciation as an annual operating expense.

This Commission has not required VNI to submit depreciation as an operating expense. Moreover, despite its ability to so chose, VNI has not elected to charge depreciation as an operating expense. VNI's application has not violated Section 58-9-350 by its decision not to submit depreciation as an expense or by the Commission not requiring the Company to submit depreciation as an expense.

As to the alleged violation of Section 58-9-570 (1976), the Commission determines that that section is inapplicable to VNI's application for a Certificate of Public Convenience and Necessity and for the establishment of initial rates and charges. Section 58-9-570 appears under Article V, Chapter 9 of Title 58 of the South Carolina Code of Laws. This Article is entitled, "Telephone Utilities-Changes in Rates." Since VNI is seeking authority to operate as a telephone utility and authority to establish its initial rates and charges, the Commission has determined that Section 58-9-570 is inapplicable.

Southern Bell alleges error on the part of the Commission in granting VNI's Application for a Certificate of Public Convenience and Necessity without the above-referenced information. However, in light of the Commission's determination that this information is inapplicable to the statutes cited by Southern Bell, the Commission did not err in granting the application without this information.

As to Southern Bell's allegations that the filing of VNI violated the Commission's Regulation 103-834 (Supp. 1990), the Commission finds that the information filed by VNI in its

application meets the Commission's requirements. VNI filed under Exhibit 6 of its application, its financial ability to provide service which included a balance sheet and an income statement. As to the other requirements listed in R.103-834 and Southern Bell's Petition for Rehearing and/or Reconsideration, the Commission finds that those requirements apply to a rate increase and not the establishment of rates and charges. Therefore, those requirements are not applicable to an application for a certificate of public convenience and necessity.

Lastly, Southern Bell alleges that the Commission's Order contains insufficient findings of fact. According to the Petition of Southern Bell, under §1-23-350 (1977), the Commission's findings of fact are required to be accompanied by a concise and explicit statement of the underlying facts supporting the findings. However, a closer reading of Section 1-23-350 requires the findings of fact to be accompanied by a concise and explicit statement of the underlying facts supporting the findings, "if set forth in statutory language." The findings of fact set forth in Order No. 91-1001 are facts gleaned from the testimony adduced during the hearing and the application filed by the Applicant. The findings of fact are supported by the substantial evidence of the whole record and are sufficient under the requirements of Section 1-23-350.

Therefore, after thorough consideration of the Petition for Rehearing and/or Reconsideration as well as the record of this proceeding before the Commission, the Commission herein denies Southern Bell's Petition for Rehearing and/or Reconsideration.

IT IS SO ORDERED.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Deputy Executive Director

(SEAL)